



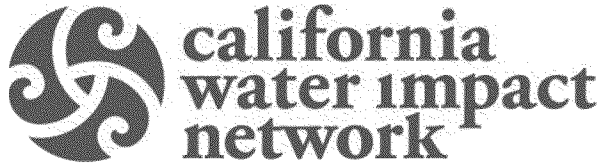
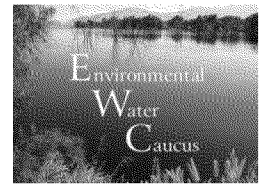
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ENVIRONMENTAL WATER CAUCUS



November 12, 2014

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Additional Addressees at end of letter

Re: Scoping Issues for the Recirculated BDCP Draft Plan, Draft EIR/EIS, Implementing Agreement to be issued in 2015

Dear Federal and California Agencies, Officers, and Staff Members Carrying out the BDCP:

Friends of the River (FOR), the California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance (CSPA), and the Environmental Water Caucus (EWC) (a coalition of over 30 nonprofit environmental and community organizations and California Indian Tribes) here provide detailed scoping comments for consideration by the California Department of Water Resources “and the other state and federal agencies leading the Bay Delta Conservation Plan (BDCP) [that] will publish a Recirculated Draft BDCP, Draft EIR/EIS, and Draft Implementing Agreement (IA) in early 2015.”

Our organizations have communicated several times to BDCP officials our concerns about deficient analysis of alternatives in the BDCP process.¹ The single most glaring deficiency in the BDCP process and documents to date remains the failure of the BDCP agencies to develop and consider a range of reasonable alternatives that would increase freshwater flows by reducing exports. We addressed this in our letter of September 4, 2014. We are concerned that BDCP agencies continue to conceal this central problem for the Tunnels project from the public by their continuing refusal to post comments and correspondence on the BDCP website. Nor have we had the courtesy of a reply to our letter of September 10, 2014 requesting “scoping” notices and participation and asking “How do Interested Parties Contact You?”

We here summarize (in sections 1 through 7 below) our previous salient points about specific deficiencies. These deficiencies must be properly scoped and corrected in BDCP’s revised, recirculated documents when they are reissued next year. In the wake of letters critical of BDCP from the US Environmental Protection Agency and the US Army Corps of Engineers, you have a number of difficult compliance and funding problems in revising BDCP documents for the next public review period. Many of these agencies’ comments and observations about BDCP, its EIR/EIS, and its draft Implementing Agreement raise points echo our comment letters this summer. This letter is intended to clarify specific areas where changes must be made to bring BDCP documents, and the project on which they are based, into compliance with law and environmental sustainability. We reiterate: the most basic change needed is to increase freshwater flows through the Delta.

We also raise two new critical issues (in sections 8 and 9 below) since the close of the BDCP comment period that bear on BDCP’s redesign.

1. Environmental Justice, Free Speech, and Full Disclosure Issues

- *The BDCP agencies must refrain from using their web site as a propaganda tool to simply promote the Plan and instead post all comments, whether supportive or critical, on the BDCP web site.* BDCP manipulates its web site to limit and exclude viewpoints critical of BDCP, rather than simply moderate them. BDCP agencies are all public agencies and have obligations under the U.S. Constitution’s First Amendment, the California Constitution, and the California Government Code, as well as the California Environmental Quality and the National Environmental Policy Act to employ the web site to further full public disclosure of viewpoints about BDCP, which would benefit environmental justice communities, and promote full disclosure about the Bay Delta Conservation Plan.
- *Enforcing the Public Trust Doctrine is an environmental justice issue.* The Delta is a common pool resource, as recognized by the Department of Water Resources. Delta public trust resources—the listed and covered fish species and the non-covered fish species of the Delta alike—are all nurtured at some point in their lives (if not their whole lives) in the Delta common pool. Members of environmental justice communities in the Delta live, play, work, and subsist in and through the resources of the Delta common pool. State government has a

¹ Recent scoping comments on the BDCP documents to be recirculated were submitted by Friends of the River, the Environmental Water Caucus, California Sportfishing Protection Alliance, and California Water Impact Network on September 4, and September 10, 2014.

fiduciary responsibility and obligation to protect the public trust. The Public Trust Doctrine is an affirmation of the duty of the state to protect the people's common heritage in streams, lakes, marshlands, and tidelands.

- *Restore the Delta for all.* Accordingly, it is incumbent on the BDCP agencies to produce a revised plan that seeks to restore the Delta for all interested parties, including the beneficial users from environmental justice communities. BDCP agencies need to overcome previous barriers to participation faced by members of environmental justice communities, including access to decision-making processes, provision of language translations, and interpretation of BDCP meetings. Environmental justice issues also span the scope of drinking water quality and supply, land use risk and hazards, water transfers that cross the Delta, impacts to affordable housing and transportation equity, air quality, public health, and jobs and economic impacts.²

2. Endangered Species Act/Natural Communities Conservation Planning Act Issues

- **Early Disclosure of Incidental Take of Covered Species.** BDCP must disclose to the public during the public review period incidental take levels in the recirculated BDCP and EIR/EIS to be inserted in the incidental take permits for covered species. It is too late for adequate participation by the public to release take levels as part of proposed issuance of the permits themselves. Such a process defeats the public's important role in reviewing BDCP, its associated documents, and the proposed levels of incidental take.
- *Complying with All Laws Will Firm Up Needed Assurances.* BDCP must upgrade what are currently inadequate biological and ecological assurances concerning covered fish species. The Delta Independent Science Panel's review confirmed our analysis that there are flawed habitat restoration hypotheses employed in the habitat restoration conservation measures of the Plan. The US EPA has noted, bolstering our arguments in previous comments, that the Tunnels project will create outflow and hydrodynamic issues that will reduce salmon survival rates and increase Delta smelt entrainment risks at the North Delta intakes. There are also stranding issues in Yolo Bypass and potentially other restoration opportunity areas. Climate change analysis is noted by US EPA and ourselves as inadequately handled in BDCP documents. Real-time operations and adaptive management processes are relied upon by BDCP as crutches to cover over serious uncertainties associated with scientific and organizational gaps in Tunnels and Conservation Measure 2 (i.e., Yolo Bypass fish facilities) contributing to stranding and habitat restoration deficiencies. Other stressor measures, such as potential selenium, mercury, and methyl mercury issues, in the overall Conservation Strategy have similar gaps and uncertainties.
- *No Water Quality Violations by the Tunnels Project.* Operation of the Tunnels project would cause increased residence times throughout the Delta, as we documented in our June comments, and which US EPA confirms in their appraisal of the project. Water quality violations of objectives established by the State Water Resources Control Board and EPA

² See the EWC's detailed comment letter of June 11, 2014, pp. 23-27, 116-117, 135-138, 164-166, 191-192, and 227-254. Accessible online at <http://ewccalifornia.org/reports/bdcpcomments6-11-2014-3.pdf>.

are to be expected for salinity, electrical conductivity, mercury, methyl mercury, selenium, pesticides, and other constituents.

- *Fix Models and Improve Forecasting Accuracy.* Modeling of upstream storage and carryover for supplies and temperature control must be clarified and addressed, as found by US EPA, the Corps, and the independent modeling review by MBK Engineers.
- *Additional Changed Circumstances Needed.* The list of “changed circumstances” in the Bay Delta Conservation Plan should be expanded to include increased discharge of selenium, arsenic, boron, molybdenum, and other toxic contaminants known to occur naturally in the drainage impaired lands of the western San Joaquin Valley that are tributary to the San Joaquin River. This is necessary so that the costs of drainage remediation are borne by the BDCP Applicants and are not externalized onto the public at large.
- *Adaptive Management Should Not Be a Crutch.* Reduce the reliance of the Bay Delta Conservation Plan on adaptive management as a substitute for regulatory authority of the State Water Resources Control Board and other appropriate regulatory agencies.

3. Funding Assurances and Financing Plan Issues

- **Needed Financial Assurances.** Recirculated BDCP documents, including especially the Plan’s financial/cost sections, and the draft Implementing Agreement, must include:
 - Funding sources, amounts, and uses for the Supplemental Adaptive Management Fund (intended for use purchasing water for environmental flows into the Delta)
 - Detailed financing plan, including state and federal water contractor participation commitments, and local financial sources and uses statements that indicate extent of reliance by participating agencies on water rate increases, State Water Project property tax increases, and other potential sources of revenue such as special parcel taxes subject to vote of the electorate.
 - Detailed financing plan for creation and expansion of the BDCP Natural Reserve called for in Conservation Measure 3, including specific plans for acquisition of existing restoration sites, as well as prospective new ones. This is necessary to ensure clear understanding by the public about what BDCP Applicants acquire as existing habitat restoration projects initiated by others versus what BDCP Applicants actually create with restoration funding resources.
- *Stabilize the unreasonable baseline assumptions* concerning future Delta water exports by conducting a more diversified alternatives analysis in BDCP Chapter 8, parallel to the revised alternatives analysis that will be required for the Draft EIR/EIS.
- Directly and in good faith *address and analyze BDCP Tunnels project’s poor cost competitiveness* with other cheaper water source alternatives.

- *Improve the inadequate analysis of water demand by both urban and agricultural customers by conducting several previously omitted analyses:*
 - Evaluate each BDCP Applicant's realistic ability to reduce reliance specifically on imported water supplies from the Delta (as required by the Delta Reform Act).
 - Apply demand elasticities to the customer service areas of both agricultural and urban BDCP Applicants to determine economically what alternative levels of investment would be needed to meet their demand for water. This should be done using a transparent, reasonable methodology which in so doing helps decision makers and the public evaluate need for the Tunnels project of Conservation Measure 1.
- *Include "step-up" provisions in contractual requirements for all water contractors participating in Delta Tunnels financing arrangements, and then determine which BDCP Applicants and other potential water contractors are still willing to participate and where water would come from (i.e., only the State Water Project or would there also be wheeling arrangements with the Central Valley Project?).*

4. Governance and Assurances

- *Ensure that ecological assurances are supported, rather than undermined, by BDCP's governance structure.*
- *Make BDCP biological goals and objectives critical to incidental take permit compliance.*
- *Make BDCP biological goals and objectives accountable to provisions of the Delta Reform Act of 2009 that require that BDCP demonstrate recovery of listed fish species.*
- *Sever control of all habitat restoration funds from the BDCP Implementation Office, and make its control directly proportional to habitat restoration funds invested by BDCP Applicants.*
- *Recognize the impossibility of adhering to both the "No Surprises" Rule and to a fully-functioning and integrated Adaptive Management Program.*
 - BDCP stacks the deck of governance and decision-making responsibility in favor of Tunnel operations, which violates the Delta Reform Act's co-equal goals.
- *Address and clarify the Bureau of Reclamation's Role.* Describe how BDCP will overcome the legal asymmetry imposed by the Bureau of Reclamation's exclusion from ESA Section 10 eligibility to participate in a habitat conservation plan. How would the BDCP agencies (including the Bureau) still meet Section 10 ecological and funding assurance requirements?
- *Address the lack of funding assurances, currently visible in the Plan, in the Draft Implementing Agreement as well.*

- *Obtain a legal opinion from the State Attorney General about whether California would contract away its fiduciary responsibility to enforce the Public Trust Doctrine by signing incidental take permits and the Implementing Agreement for BDCP.*
- *Ensure inclusion of environmental justice community members.* Reconsider composition of the BDCP stakeholder council to ensure broad inclusion of environmental justice community members and ensure funding that facilitates participation through use of stipends and language accessibility.
- *Brown Act Compliance by BDCP Entities.* Ensure that the Authorized Entity Group and the Permit Oversight Group each comply with California's open public meeting law, the Brown Act. Please explain whether and under what circumstances federal members of both Groups might have difficulty doing so, and describe how such problems could be overcome to facilitate Brown Act compliance.

5. Water Quality Issues

- **Increase Freshwater Flows Into and Through the Delta.** Again, the most fundamental need in the Delta is to increase freshwater flows through the Delta and not adopt the Tunnels or other new upstream conveyance alternative. If that is not done, demonstrate how the revised, recirculated Tunnels project and associated documents and restoration plans comply with federal Clean Water Act and state Porter-Cologne Water Quality Control Act anti-degradation requirements.
- Demonstrate how the revised, recirculated Tunnels project and associated documents and restoration plans would reduce residence time in such a way as to improve water quality in the Delta and facilitate meeting the co-equal goals established for the project in state law.
- Demonstrate how the revised, recirculated Tunnels project and associated documents and restoration plans comply with water quality objectives and criteria for all regulated constituents, including but not limited to, salinity, electrical conductivity, mercury, methyl mercury, pesticides, and selenium.
- Antidegradation analysis required by state and federal clean water laws for the Tunnels project and other components of the BDCP Conservation Strategy.

6. NEPA/CEQA Compliance

- Provide complete environmental survey and geotechnical data relating to habitat restoration, Tunnels, and other water facilities of BDCP.
- Prepare all needed biological assessments and biological opinions to accompany revised, recirculated BDCP documents and NEPA/CEQA documents.

- Incorporate all elements of the Tunnels project's purpose and need, including the role of water transfers meeting supplemental demands of contractors and increasing capacity utilization of the Tunnels project.
- Explicitly define water supply reliability comprehensively, and indicate how BDCP addresses reliability, while still achieving co-equal goals.
- As mandated by EPA and many other commenters, provide a reasonable range of alternatives including several that examine reduced exports to achieve higher Delta outflow in relation to habitat restoration outcomes.
 - Include use of Delta flow criteria developed by the State Water Resources Control Board pursuant to Water Code Section 85086, with variations in habitat restoration actions.
 - Include invasive nonnative clam (*Potamocorbula amurensis* in particular) management as a conservation measure to provide variations in habitat restoration components of the BDCP Conservation Strategy, coordinated with increased outflow alternatives.
 - Include selenium management conservation measure in tandem with habitat restoration components that increase Delta inflows and outflow (especially for the San Joaquin River).
 - Include among the new reasonable range of alternatives examination of the Environmental Water Caucus's Responsible Exports Plan.
 - Evaluate fish population survival rates from increased flow alternatives with reduced exports.
- Beef up setting discussions in the areas of environmental justice, over-appropriation of water rights, water transfers (both as a point of controversy and as an objectively frequent occurrence), present and past groundwater conditions in the Sacramento Valley, direct comparison of Tunnels project's operational modeling criteria with existing Delta water quality objectives now in force, and disclosure of chronic violations of Delta water quality objectives by the Bureau and DWR.
- Provide adequate impact analyses of:
 - Environmental justice issues.
 - Water transfers, especially in supplemental demand years (where State Water Project allocations are 50 percent or less of Table A contract amounts, and CVP allocations are 40 percent or less of contractual amounts).
 - Groundwater impacts in the Sacramento Valley of groundwater substitution water transfers.

- Conservation Measure 1 construction and operational effects on Delta subirrigation practices.
- Methyl mercury impacts from sediment disturbance and other bioavailability pathways through covered and non-covered species to public health and environmental justice issues.
- Habitat restoration and water quality effects (through increased residence time) on piscivorous predator behavior, invasive bivalves, and food webs generally.
- Potential water quality violations, as described above.
- Effects of Tunnels and habitat restoration actions in BDCP on subsistence beneficial users described in the State Water Board's Bay-Delta Water Quality Control Plan of 2006 and 1995.
- Effects of the Conservation Strategy on area land use, agriculture, and Delta economy, and impacts as a result on environmental justice communities.

7. Delta Reform Act and Water Code Compliance

- Develop and consider alternatives that would actively establish recovery of Delta ecosystems and listed fish populations to levels already established in the California Fish and Game Code and the Central Valley Project Improvement Act of 1992.
- Demonstrate how the revised Bay Delta Conservation Plan would comply with the co-equal goals of the Delta Reform Act.
- In coordination with the analysis described above about the BDCP Applicants demonstrating how they would reduce reliance on imported supplies specifically from the Delta, ensure that analysis demonstrates compliance with Water Code Section 85021.
- Incorporate analyses that reflect the best available science obtained through the information proceeding conducted by the State Water Resources Control Board in 2010, and their approval of the Delta Flow Criteria Report that August.
- Again, the most fundamental need is to increase freshwater flows through the Delta and not adopt the Tunnels or other new upstream conveyance alternative. If this action to increase flows is not taken, then demonstrate how the revised, recirculated Tunnels project and associated documents and restoration plans comply with the Public Trust Doctrine and the state's constitutional requirement for reasonable use and method of use and diversion of water applicable to the Delta.

- Demonstrate how the revised, recirculated Tunnels project and associated documents and restoration plans comply with area of origins water rights of the Delta and other upstream areas of California.
- Demonstrate how the revised, recirculated Tunnels project and associated documents and restoration plans comply with the non-injury rule in California water rights law, and the need to change the State Water Project's point of diversion, and its purpose and place of use of Tunnels water.

8. NEPA Compliance for BDCP and Integrated Consultation on the Coordinated Long-term Operation of the CVP and SWP with the BDCP

Our organizations commented earlier this year regarding BDCP and the EIR/EIS about piecemealing problems with the first round of these documents. This problem has worsened. We attach a 25-page document entitled "Performance Work Statement, National Environmental Policy Act (NEPA) Compliance for the Integrated Consultation on the Coordinated Long-term Operation of the Central Valley Project (CVP) and State Water Project (SWP) with the Bay Delta Conservation Plan (BDCP)" (July 16, 2014).

The background section of the attached Performance Work Statement explains that:

Review of the potential impacts of the alternatives under NEPA must be completed on the entirety of the CVP and SWP coordinated operation in conjunction with implementation of the BDCP (which includes new water conveyance facilities and large-scale habitat restoration in the Delta) in order to determine the overall effects of the proposed action. New conveyance and habitat restoration resulting from implementation of the BDCP needs to be considered within the context of operation of the CVP and SWP system as a whole.

(Performance Work Statement at p.1; emphasis added).

The Performance Worked Statement includes in explaining the purpose and scope of the work that:

The required environmental compliance documentation includes an Environmental Impact Statement analyzing the impacts of the coordinated long-term operation of the CVP and SWP, including new water conveyance facilities and large-scale habitat restoration as proposed by the BDCP in the Delta. The required analyses and resultant documentation must be completed in accordance with NEPA.

(Performance Work Statement at p. 2).

It appears that a federal BDCP agency, the Bureau of Reclamation, is the lead agency for carrying out the NEPA work as the Statement specifies that "all deliverables (other than invoices) shall be delivered to the Contracting Officer's Representative (COR) at Reclamation's Bay-Delta Office on the specified due dates listed below." (*Id.*).

The Statement explains under “Task 2: Alternatives Development” that a sufficient range of alternatives should be developed. (p. 8). The narrative for the Project Description states: “The proposed action will be the proposed coordinated operation of the CVP and SWP *with new conveyance facilities and associated conservation measures proposed in the BDCP.*” (p. 9, emphasis added).

The NEPA compliance for the Integrated Consultation on operation of the CVP and SWP is being carried out separately from the ongoing BDCP NEPA and CEQA process. If separation continues, both the BDCP process and the compliance for Integrated Consultation process will violate the NEPA and CEQA prohibitions against “piecemealing,” also called “segmenting,” environmental review. Moreover, the NEPA and CEQA requirements that cumulative impacts be disclosed and analyzed will also be violated by this separation of environmental review.

FOR has already commented on the secret BDCP planning going on between the agencies and the exporters and their consultants in our July 24, 2014 BDCP comment letter. Our comment letter (pp. 5-6) referred to a document called the “BDCP Federal Open Issues Tracker” (apparently dated March 28, 2014). Those issues with respect to BDCP new conveyance operation included “2) whether the High Outflow Scenario (HOS) draws from Oroville only or whether other COA [Coordinated Operations Agreement] ‘adjustments’ will occur; 3) whether water transfer programs are part of meeting the HOS requirements, and if so, how to address their NEPA/CEQA-related effects;”

The BDCP Federal Open Issues Tracker also states with respect to “CVP Upstream Operations”:

- a. STATUS; Recent refinements to real-time operations state that meeting BDCP exports will require an (unspecified) accounting between the CVP and the State project. This accounting needs to be clarified and agreed upon.
- b. This change raises several fundamental issues of project operations and Project impacts and it may trigger additional NEPA/CEQA analyses. This change may also affect the scope and timing of the ESA section 7 consultations associated with the BDCP.

It is difficult if not impossible to imagine a closer relationship for NEPA and CEQA purposes than that between the proposed new BDCP water conveyance facilities and the operations of the upstream CVP and SWP reservoirs as well as other facilities of the CVP and SWP system. Planned long-term operations of the CVP and SWP system determine whether the new conveyance proposed by the BDCP makes any sense as an alternative. In turn, whether or not the new conveyance proposed by the BDCP is approved will make a major difference in the actual long-term operations of the CVP and SWP system.

If it continues, this deliberate separation of the BDCP NEPA and CEQA process from the NEPA compliance process for the Integrated Consultation on the Coordinated Long-term Operation of the CVP and SWP with the BDCP will be a bad faith segmentation of environmental review for the purpose of avoiding environmental full disclosure of environmental and cumulative impacts required by NEPA and CEQA.

CEQA requires that “an agency must use its best efforts to find out and disclose all that it reasonably can” about a project being considered and its environmental impacts. *Vineyard Area Citizens v. City of Rancho Cordova*, 40 Cal.4th 412, 428 (2007). Under CEQA a “project” is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. . .” 14 Code Cal. Regs (CEQA Guidelines) § 15378(a). The courts have explained that:

Theoretical independence is not a good reason for segmenting environmental analysis of the two matters. Doing so runs the risk that some environmental impacts produced by the way the two matters combined or interact might not be analyzed in the separate environmental reviews. Furthermore, if the two matters are analyzed in sequence (which was a situation here) and the combined or interactive environmental effects are not fully recognized until review of the second matter, the opportunity to implement effective mitigation measures as part of the first matter may be lost.

Tuolumne County Citizens for Responsible Growth v. City of Sonora, 155 Cal.App.4th 1214, 1230 (2007).

Also, the California Supreme Court has held that future water sources “and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis.” *Vineyard Area Citizens*, 40 Cal.4th 412, 431. “An EIR that neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water supply considerations to later stages of the project, does not serve the purpose of sounding an environmental alarm bell before the project has taken on overwhelming bureaucratic and financial momentum.” *Vineyard Area Citizens*, 40 Cal.4th 412, 441 (internal citations and quotation marks deleted).

The rules under NEPA are similar in these respects to those under CEQA. The NEPA Regulations are codified at title 40 of the Code of Federal Regulations (C.F.R.). The NEPA Regulations specify that “Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. . . . Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”

(40 C.F.R. § 1502.4(a). *See also*, § 1508.25(a)(1) (“Connected actions, which means that they are closely related and therefore should be considered in the same impact statement.”)).

The NEPA Regulations also require that agencies “Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.” § 1500.2(c). *See also* § 1501.2 (“Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”).

Preparing separate environmental impact statements for BDCP and long-term operation of the CVP and SWP, including new water conveyance facilities proposed by the BDCP in the Delta would be a blatant bad faith effort to approve the proposed Water Tunnels first, before evaluating

the overall consequences for long-term operations of the CVP and SWP. Segmentation of environmental review if carried out will violate both NEPA and CEQA.

To proceed in the manner required by NEPA and CEQA, the BDCP agencies must drop the plan to prepare separate EIS's and instead prepare one EIR/EIS addressing both the BDCP and the long-term operation of the CVP and SWP including new water conveyance facilities proposed by the BDCP in the Delta.

9. Likely Settlement Agreement between Westlands and the United States

We also attach a document entitled "Principles of Agreement for a Proposed Settlement Between the United States and Westlands Water District regarding Drainage" (Draft December 6, 2013). We are also aware of Federal Defendants' Status Report of October 1, 2014 filed October 1, 2014 (Document 980) in *Firebaugh Canal Water District v. United States*, in action no. CV-F-88-634-LJO/DLB in the Eastern District of California. In that document, the Department of Justice attorney for the United States stated among other things that "Federal Defendants now report that negotiators for the United States and Westlands have reached consensus, subject to approval, on potential terms for settlement regarding the management of drainage within Westlands' service area." (p. 3:14-16).

Pursuant to the negotiations the water supply to Westlands would be permanent and also arbitrarily and capriciously receive a much higher water delivery priority. The terms of the proposed agreement need to be disclosed and evaluated in the BDCP process. They must be also subject to environmental and alternatives analysis under NEPA and the Endangered Species Act (ESA) in the upcoming new BDCP draft documents. Scientists and federal agencies, including the U.S. Geological Survey and the U.S. Fish and Wildlife Service, have previously concluded that the best solution to the drainage problem would be to retire 300,000 to about 400,000 acres in the western San Joaquin Valley from irrigation. Instead, negotiations with Westlands appear headed toward producing the worst possible outcome of continuing to irrigate lands producing enormous amounts of salt and selenium while allowing Westlands growers to establish in effect a permanent water supply for sale, as opposed to reducing exports as lands are and should be retired from irrigation. They have sought such a dream deal for over a decade. It is time to have it fully evaluated in ESA, NEPA and CEQA documents for which proposed settlement terms must be considered a cumulative project, at a minimum.

Conclusion

The continuing drive to supply irrigation water to drainage-impaired lands, and authorizing cross-Delta water transfers has yet to be fairly and dispassionately analyzed in BDCP documents to date. Meanwhile, to repeat: BDCP environmental documents must make a good faith effort to analyze alternatives that reduce exports and increase inflow to and outflow through the Delta. Lands retired from irrigation need to be up front and center, disclosed, and analyzed in the revised draft EIR/EIS including the setting/affected environment sections of the EIR/EIS, and in the changed circumstances and relevant conservation measure discussions in the revised draft BDCP documents now scheduled to be issued in 2015. Adhering to our recommendations in good faith, BDCP agencies would go a long way toward among other things, acting in a rational way to retire drainage-impaired lands from irrigation and reducing exports and adoption of an alternative

increasing freshwater flows through the Delta, and not adopting a plan for new conveyance in the Delta.

Should you have questions, please contact Conner Everts, Co-Facilitator, Environmental Water Caucus at (310) 394-6162 ext. 111 or Robert Wright, Senior Counsel, Friends of the River at (916) 442-3155 ext. 207.

Sincerely,

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/s/ Bill Jennings
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